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TVIIM, LLC

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

TVIIM, LLC, a Colorado Limited liability  
company,

Plaintiff,

v.

MCAFEE, INC., a corporation,

Defendant.

Case No. 3:13-cv-04545-JST

**ANSWER TO COUNTERCLAIMS**

MCAFEE, INC., a corporation,

Counterclaimant,

v.

TVIIM, LLC, a Colorado Limited liability  
company,

Counterclaim Defendant.

**DEMAND FOR JURY TRIAL**

Hon. Jon S. Tigar

1 Plaintiff TVIIM, LLC, (“Innerwall”) respectfully submits this response to Defendant  
2 McAfee, Inc.’s (“McAfee”) Counterclaims (Dkt. No. 13). INNERWALL denies each and every  
3 allegation in McAfee’s Counterclaims that is not specifically admitted herein. Innerwall responds  
4 to the counterclaims as follows:

5 1. Innerwall admits the allegations of Paragraph 1 to the extent they are accurately  
6 reflected in Innerwall’s Complaint.

7 2. Innerwall denies the allegations of Paragraph 2, except that Innerwall admits that  
8 Innerwall has accused McAfee of infringing the ‘168 Patent.

9 3. Paragraph 3 asserts a legal conclusion to which no response is required.

10 4. Innerwall lacks knowledge or information sufficient to form a belief about the  
11 allegations of Paragraph 4, except that Innerwall admits that McAfee’s principal place of business  
12 is in Santa Clara, California.

13 5. Innerwall admits the allegations of Paragraph 5 to the extent they are accurately  
14 reflected in Innerwall’s Complaint.

15 6. Innerwall denies the allegations of Paragraph 6, except that Innerwall admits the  
16 Court has subject matter jurisdiction over McAfee’s Counterclaims.

17 7. Innerwall denies the allegations of Paragraph 7, except that Innerwall admits the  
18 Court has personal jurisdiction over Innerwall.

19 8. Innerwall denies the allegations of Paragraph 8, except that Innerwall admits that  
20 venue for McAfee’s Counterclaims is properly in this District.

21 **MCAFEE’S FIRST COUNTERCLAIM**

22 9. Innerwall repeats and re-alleges the allegations of its Complaint, and its responses  
23 to McAfee’s Counterclaims set forth above and below, as if set forth here in full.

24 10. Innerwall denies the allegations of Paragraph 10.

25 11. Innerwall denies the allegations of Paragraph 11.

26 **MCAFEE’S SECOND COUNTERCLAIM**

27 12. Innerwall repeats and re-alleges the allegations of its Complaint, and its responses  
28 to McAfee’s Counterclaims set forth above and below, as if set forth here in full.

13. Innerwall denies the allegations of Paragraph 13.

14. Innerwall denies the allegations of Paragraph 14.

**General Denial**

Innerwall denies each and every allegation in McAfee's Answer and Counterclaims which has not been specifically admitted herein. Innerwall further denies that McAfee is entitled to any relief as claimed in the Prayer for Relief.

**Affirmative Defenses**

Innerwall allege the following affirmative defenses against McAfee's Counterclaims. By alleging the matters set forth in this affirmative defenses, Innerwall does not thereby allege or admit that it has the burden of proof with respect to any such matters.

**First Affirmative Defense**

(Failure to State a Claim)

29. McAfee's Counterclaims fail to state facts sufficient to constitute a cause of action.

**Second Affirmative Defense**

(Doctrine of Unclean Hands)

30. McAfee has unclean hands, and it would be inequitable to grant to McAfee any remedies sought by its Counterclaims.

**Third Affirmative Defense**

(Estoppel)

31. McAfee is estopped by reason of its conduct, acts, and omissions from recovery on any claims that it may have against Innerwall.

**Fourth Affirmative Defense**

(Inequitable/Against Public Policy)

32. Under the circumstances, holding Innerwall responsible for any purported damages allegedly suffered by McAfee would be inequitable, unfair, and/or against public policy.

**Fifth Affirmative Defense**

(Statute of Limitations)

1           33. To the extent that the causes of action arose prior to the applicable prescriptive or  
2 statutory period, McAfee Counterclaims are barred, in whole or in part, by the applicable statute  
3 of limitations and/or statute of repose.

4                                   **Sixth Affirmative Defense**

5                                   (Failure to Mitigate)

6           34. McAfee has not been injured in any way or in any matter as a result of any act or  
7 omission of Innerwall or has failed to mitigate its damages.

8                                   **Seventh Affirmative Defense**

9                                   (Equities)

10          35. The Counterclaims are barred in whole or in part by the equitable doctrines of  
11 estoppel, misuse and/or waiver.

12          Innerwall reserves the right to allege other affirmative defenses as they may become  
13 known during the course of discovery, and hereby specifically reserves the right to amend its  
14 Answer to Counterclaims to allege said affirmative defenses as such time as they become known.

15                                   **Prayer for Relief**

16          WHEREFORE, Innerwall prays that the Court enter judgment in its favor and against  
17 McAfee, including:

- 18                   1. That McAfee take nothing by its Counterclaims;
  - 19                   2. For judgment dismissing McAfee's Counterclaims;
  - 20                   3. That Innerwall be awarded its reasonable attorney's fee in the defense of  
21 this action;
  - 22                   4. For an assessment of cost against McAfee; and
  - 23                   5. For such other relief as the Court may deem just.
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1 Dated: December 30, 2013

LATHROP & GAGE LLP

2  
3 By: /s/ John Shaeffer  
4 John J. Shaeffer  
5 Attorneys for Plaintiff  
6 TVIIM, LLC  
7

8 **JURY DEMAND**

9 Innerwall demands a trial by jury on all issues so triable.  
10

11 Dated: December 30, 2013

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12  
13 By:/s/ John Shaeffer  
14 John J. Shaeffer  
15 Attorneys for Plaintiff  
16 TVIIM, LLC  
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